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Wong Zing Haw v Public Prosecutor

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COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO Q-05(M)-456–12 OF 2020
AZIZAH NAWAWI, SEE MEE CHUN AND MOHAMED ZAINI MAZLAN JJCA
2 MAY 2025

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Criminal Procedure — Appeal — Appeal against conviction and sentence — Appellant charged with murder of his wife — Trial judge found appellant guilty based on circumstantial evidence — Appellant was convicted and sentenced to death — Whether actual cause of deceased's death needed to be proven — Whether injuries inflicted on deceased sufficient in ordinary cause of nature to cause death — Whether trial judge failed to make finding of mens rea — Whether mens rea was proven — Whether appellant had any motive to murder the deceased — Whether motive necessary when relying on circumstantial evidence to convict accused — Whether court should maintain sentence of death penalty imposed by trial judge — Abolition of Mandatory Death Penalty Act 2023 — Evidence Act 1950 s 27 — Penal Code ss 300(c) & 302

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The appellant was charged with the murder of his wife ('the deceased') under s 302 of the Penal Code ('the PC'). This tragic case came to light when two anglers discovered the deceased's bodiless head on a riverbank. The prosecution's case was that the appellant had caused the death of the deceased and this was based on, inter alia, the following circumstantial evidence: (a) the strained relationship between the appellant and the deceased; (b) the whereabouts of the deceased prior to her death and the appellant's suspicious behaviour; (c) the frequent quarrels and violent acts between the appellant and the deceased; (d) the pungent stench of bleach in the appellant's house; (e) the appellant's purchase of hardware items such as chopping knives, hacksaws, a grinder, a chopping board, charcoal and heavy-duty pots a few days after the deceased was last seen alive; (f) the appellant's green notebook, which had the appellant's handwritten notes of human body parts; (g) the testimony of the deceased's daughter, Chloe and the appellant's employees, Lili and Panthera; (h) the appellant's statement leading to the discovery of evidence under s 27 of the Evidence Act 1950; and (i) the appellant's unusual and inconsistent conduct after the deceased's disappearance and after arrest ('the circumstantial evidence'). Further, the prosecution had also relied on the following evidence: (i) the evidence of the pathologist ('PW5') who stated that the knife seized from the appellant's home could have been used to dismember the deceased's body; and (ii) human hairs that were found on a wooden chopping board taken from the appellant's home. At the end of the prosecution's case, based on the

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evidence, the trial judge held that the appellant had deliberately caused the injuries leading to the deceased's death which fell under s 300(c) of the PC and that the prosecution had proven a prima facie case. In defence, the appellant denied his involvement in the offence and alleged that the deceased had went to Kuching for two reasons, firstly, for immigration matters as she had planned to return to China and secondly, to buy new handphone. Further, the appellant argued that he had also went to Kuching to search for the deceased but to no avail. At the end of the trial, the trial judge found that the appellant's defences were mere denials and that he had failed to cast any reasonable doubt on the prosecution's case. The appellant was found guilty of murder and sentenced to death by hanging. The appellant then filed the present appeal premised on the following issues: (A) what injury/injuries were inflicted on the deceased that was/were sufficient in the ordinary cause of nature to cause the deceased's death ('the first issue'); (B) the absence of mens rea and/or finding of the same ('the second issue'); and (C) a complete absence of motive for the appellant to murder the deceased ('the third issue').

Held, dismissing the appellant's appeal:

(1) PW5's reasons for not being able to ascertain the exact cause of death had been clearly explained. It was however not fatal to determine conclusively the precise cause of death. Even though the pathologist was not able to ascertain the actual cause of death, the fact remained that the deceased had died. She would have died from some bodily injury sufficient to cause her death as she was decapitated, which could have been the cause of death. The actual cause of death did not need to be conclusively proven, for there had been decided cases where the bodies of the victims were either not recovered or in a state where it was impossible to ascertain the cause of death (see paras 64–65).

(2) The trial judge correctly concluded that the only reasonable inference was that the appellant caused the death of the deceased. No one else had contact with the deceased before her disappearance, and she was last seen alive in their matrimonial home. The trial judge's conclusion was further supported by PW5's evidence that the knife seized from the appellant's home could have been used to dismember the deceased's body. Additionally, human hairs were found on a wooden chopping board taken from the appellant's home. The deceased was last seen alive by the appellant's daughter, Chloe, who observed the deceased chained to the bed. Chloe and her brother were then ordered out of the room by the appellant. Therefore, any injuries that led to the deceased's death could only have been inflicted by the appellant. This was the only reasonable conclusion. The court therefore found no appealable errors in the trial judge's findings on the first issue (see paras 66–67).

(3) Although the trial judge may not have expressly stated the phrase mens rea in his judgment, he had concluded that the appellant had the intention to inflict the injuries that caused the death of the deceased under s 300(c) of the PC as all the evidence led to that conclusion. Based on the evidence, the trial judge had inferred that the knife seized from the appellant's home was used to inflict the injuries on the deceased. The trial judge rightly concluded that the appellant was responsible for inflicting the injuries on the deceased, the appellant must have intentionally intended to cause those injuries. This fell under limb (c) of s 300 of the Penal Code. The court fully agreed with the trial judge's findings and saw no appealable errors regarding the second issue (see paras 73–74).

(4) The proof of motive would no doubt lend more credence in proving the appellant's intention to murder the deceased. Motive however was not a *sine qua non* of intention. Motive was not necessary when relying on circumstantial evidence to convict an accused. In the present case, the circumstantial evidence, when viewed collectively, led to an undeniable conclusion that the appellant murdered the deceased. The court found that the trial judge had thoroughly analysed the circumstantial evidence in reaching the same conclusion. The court found no reasons to disturb the trial judge's findings of fact (see paras 81–84).

(5) Pursuant to the Abolition of Mandatory Death Penalty Act 2023, the court in the present case vested with the discretion whether to maintain the death sentence or replace it with imprisonment and whipping of the appellant. Before passing a sentence, the court must consider several factors. The first and uppermost factor was public interest. While it was necessary to balance the appellant's interests with those of the public, the sentence must not only deter others from committing similar crimes but also reflect society's revulsion toward the crime committed (see paras 85–87).

(6) In the present case, the court was unreservedly inclined to maintain the death penalty imposed on the appellant for the following reasons: (a) the crime was committed against a woman who was not only the appellant's wife but also the mother of their two children and her death had deprived those children of the care and love that a mother could provide for many years; (b) the appellant had mistreated the deceased by chaining her to the bed, where the children could see her; (c) the appellant had brutally cut the deceased's body into several pieces and disposed of the parts in the river; and (d) the appellant attempted to conceal his crime and showed no remorse. A clear message must be conveyed to the public that a crime of this nature was abhorred, and the ultimate punishment would be the death penalty (see paras 88–89).

(7) In conclusion, the factual findings of the trial court should not be disturbed, as they were largely based on the credibility of the witnesses

and the impression formed by the trial judge, who personally observed them and assessed their honesty and accuracy. The court was satisfied that there were no appealable errors that would warrant appellate intervention and found that the conviction against the appellant was safe (see paras 90–91).

[Bahasa Malaysia summary

Perayu dituduh membunuh isterinya ('si mati') di bawah s 302 Kanun Keseksaan ('KK'). Kes tragis ini terbongkar apabila dua pemancing menemui kepala si mati di tebing sungai. Kes pendakwaan adalah bahawa perayu telah menyebabkan kematian si mati dan ini adalah berdasarkan, antara lain, keterangan mengikut keadaan yang berikut: (a) hubungan tegang antara perayu dan si mati; (b) keberadaan si mati sebelum kematiannya dan kelakuan perayu yang mencurigakan; (c) pertengkaran dan perbuatan ganas yang kerap berlaku antara perayu dan si mati; (d) bau busuk bahan peluntur di rumah perayu; (e) pembelian barang perkakasan oleh perayu seperti pisau pemotong, gergaji besi, pengisar, papan pencincang, arang dan periuk berat beberapa hari selepas kali terakhir si mati dilihat masih hidup; (f) buku nota hijau perayu, yang mempunyai nota tulisan tangan perayu berkenaan bahagian badan manusia; (g) keterangan anak perempuan si mati, Chloe dan pekerja-pekerja perayu, Lili dan Panthera; (h) pernyataan perayu yang membawa kepada penemuan keterangan di bawah s 27 Akta Keterangan 1950; dan (i) kelakuan luar biasa dan tidak konsisten perayu selepas kehilangan si mati dan selepas ditangkap ('keterangan mengikut keadaan tersebut'). Selanjutnya, pihak pendakwaan juga bergantung kepada keterangan berikut: (i) keterangan ahli patologi ('PW5') yang menyatakan bahawa pisau yang dirampas dari rumah perayu boleh digunakan untuk memotong mayat si mati; dan (ii) rambut manusia yang ditemui pada papan pemotong kayu yang diambil dari rumah perayu. Pada akhir kes pendakwaan, berdasarkan keterangan, hakim bicara memutuskan bahawa perayu telah dengan sengaja menyebabkan bencana tubuh yang membawa kepada kematian si mati yang jatuh di bawah s 300(c) KK dan bahawa pihak pendakwaan telah membuktikan kes prima facie. Dalam pembelaan, perayu menafikan penglibatannya dalam kesalahan tersebut dan mendakwa si mati telah pergi ke Kuching atas dua sebab, pertama, untuk urusan imigresen kerana dia merancang untuk pulang ke China dan kedua, untuk membeli telefon bimbit baharu. Selanjutnya, perayu mendakwa bahawa dia juga telah pergi ke Kuching untuk mencari si mati tetapi tidak berjaya. Pada akhir perbicaraan, hakim bicara mendapati bahawa pembelaan perayu hanyalah penafian semata-mata dan bahawa dia telah gagal menimbulkan apa-apa keraguan munasabah ke atas kes pendakwaan. Perayu didapati bersalah atas kesalahan membunuh dan dijatuhkan hukuman gantung sampai mati. Perayu kemudiannya memfailkan rayuan semasa berdasarkan isu-isu berikut: (A) apakah bencana tubuh yang dikenakan ke atas si mati yang cukup, pada lazimnya, bagi menyebabkan kematian si mati ('isu pertama'); (B) ketiadaan mens rea dan/atau dapatan berkaitan mens rea ('isu

kedua'); dan (C) ketiadaan apa-apa motif untuk perayu membunuh si mati ('isu ketiga'). A

Diputuskan, menolak rayuan perayu:

(1) Alasan-alasan mengapa PW5 tidak dapat memastikan punca sebenar kematian telah dinyatakan dengan jelas. Ia bagaimanapun tidak wajib untuk menentukan secara muktamad punca sebenar kematian. Walaupun pakar patologi tidak dapat memastikan punca sebenar kematian, fakta kekal bahawa si mati telah meninggal dunia. Dia mungkin meninggal dunia akibat kecederaan badan yang cukup untuk menyebabkan kematiannya kerana dia dipenggal, yang boleh menjadi punca kematian. Punca kematian sebenar tidak perlu dibuktikan secara muktamad, kerana terdapat kes-kes duluan yang telah diputuskan di mana mayat mangsa sama ada tidak ditemui atau dalam keadaan yang mustahil untuk dipastikan punca kematian (lihat perenggan 64–65). B C D

(2) Hakim bicara telah membuat kesimpulan yang tepat bahawa satu-satunya inferens yang munasabah ialah perayu telah menyebabkan kematian si mati. Tiada orang lain yang berhubung dengan si mati sebelum kehilangannya, dan dia kali terakhir dilihat hidup di kediaman mereka. Kesimpulan hakim bicara tersebut disokong lagi dengan keterangan PW5 bahawa pisau yang dirampas dari rumah perayu boleh digunakan untuk memotong mayat si mati. Selain itu, rambut manusia telah ditemui pada papan pemotong yang diambil dari rumah perayu. Kali terakhir si mati dilihat masih hidup oleh anak perempuan perayu, Chloe, yang memerhatikan si mati dirantai di atas katil. Chloe dan adiknya kemudian diarahkan keluar dari bilik oleh perayu. Oleh itu, apa-apa bencana tubuh yang membawa kepada kematian si mati hanya boleh dilakukan oleh perayu. Ini adalah satu-satunya kesimpulan yang munasabah. Oleh itu mahkamah tidak menemui kekhilafan yang boleh dirayu dalam dapatan hakim bicara mengenai isu pertama (lihat perenggan 66–67). E F G

(3) Walaupun hakim bicara mungkin tidak menyatakan secara jelas frasa mens rea dalam penghakimannya, namun beliau telah membuat kesimpulan bahawa perayu mempunyai niat untuk mengenakan bencana tubuh yang menyebabkan kematian si mati di bawah s 300(c) KK kerana semua keterangan membawa kepada kesimpulan tersebut. Berdasarkan keterangan, hakim bicara telah membuat inferens bahawa pisau yang dirampas dari rumah perayu digunakan untuk mendatangkan bencana tubuh kepada si mati. Hakim bicara dengan tepat membuat kesimpulan bahawa perayu bertanggungjawab untuk mendatangkan bencana tubuh ke atas si mati, perayu tentunya dengan sengaja berniat untuk menyebabkan bencana tubuh tersebut. Ini termasuk di bawah limba (c) s 300 Kanun Keseksaan. Mahkamah bersetuju sepenuhnya H I

dengan dapatan hakim bicara dan tidak melihat apa-apa kekhilafan yang boleh dirayu berhubung isu kedua (lihat perenggan 73–74).

(4) Bukti motif sudah pasti akan memberi lebih kepercayaan dalam membuktikan niat perayu untuk membunuh si mati. Walau bagaimanapun, motif bukanlah suatu *sine qua non* bagi niat. Motif tidak diperlukan apabila bergantung kepada keterangan mengikut keadaan untuk mensabitkan tertuduh. Dalam kes semasa, keterangan mengikut keadaan tersebut, apabila dilihat secara kolektif, membawa kepada kesimpulan yang tidak dapat disangkal bahawa perayu membunuh si mati. Mahkamah mendapati bahawa hakim bicara telah menganalisis dengan teliti keterangan mengikut keadaan tersebut dalam mencapai kesimpulan yang sama. Mahkamah tidak menemui sebab untuk mengganggu dapatan fakta hakim bicara (lihat perenggan 81–84).

(5) Berdasarkan Akta Pemansuhan Hukuman Mati Mandatori 2023, mahkamah dalam kes semasa mempunyai budi bicara sama ada untuk mengekalkan hukuman mati atau menggantikannya dengan penjara dan sebat ke atas perayu. Sebelum menjatuhkan hukuman, mahkamah harus mempertimbangkan beberapa faktor. Faktor pertama dan paling utama ialah kepentingan awam. Walaupun mahkamah perlu untuk mengimbangi kepentingan perayu dengan kepentingan awam, hukuman yang dijatuhkan bukan sahaja harus menghalang orang lain daripada melakukan jenayah yang serupa tetapi juga mencerminkan kebencian masyarakat terhadap jenayah yang dilakukan (lihat perenggan 85–87).

(6) Dalam kes semasa, mahkamah tanpa ragu-ragu cenderung untuk mengekalkan hukuman mati yang dikenakan ke atas perayu atas sebab-sebab berikut: (a) jenayah tersebut dilakukan terhadap seorang wanita yang bukan sahaja isteri perayu tetapi juga ibu kepada dua anak mereka dan kematiannya telah menafikan penjagaan dan kasih sayang yang boleh diberikan oleh seorang ibu selama bertahun-tahun; (b) perayu telah menganiaya si mati dengan merantainya di atas katil, di mana anak-anak mereka boleh melihatnya; (c) perayu telah memotong mayat si mati dengan kejam kepada beberapa bahagian dan membuang bahagian badan si mati di dalam sungai; dan (d) perayu cuba menyembunyikan jenayahnya dan tidak menunjukkan penyesalan. Mesej yang jelas harus disampaikan kepada orang ramai bahawa jenayah sebegini amat dibenci, dan hukuman yang muktamad ialah hukuman mati (lihat perenggan 88–89).

(7) Kesimpulannya, dapatan-dapatan fakta mahkamah bicara tidak boleh diganggu, kerana ia sebahagian besarnya berdasarkan kredibiliti saksi-saksi dan tanggapan yang dibentuk oleh hakim bicara, yang secara peribadi memerhati mereka dan menilai kejujuran dan ketepatan mereka. Mahkamah berpuas hati bahawa tiada kekhilafan yang boleh dirayu yang memerlukan campur tangan rayuan dan mendapati sabitan

terhadap perayu adalah selamat (lihat perenggan 90–91).]

Cases referred to

Hoo Ah Tee v PP [2013] 4 MLJ 636; [2013] 4 CLJ 228, CA (refd)
Pathmanabhan a/l Nalliannen v PP and other appeals [2017] 3 MLJ 141; [2017] 4 CLJ 137, FC (refd)
PP v Muhammad Khairuanuar bin Baharuddin and another appeal [2024] 6 MLJ 397; [2025] 1 CLJ 517, FC (refd)
PP v Sanderasegaran a/l Nithenanham [2024] 3 MLJ 629; [2024] 4 CLJ 823, FC (refd)
PP v Oh Laye Koh [1994] SCD 63; [1994] 2 SLR 385, CA (refd)
Sunny Ang v PP [1966] 2 MLJ 195, FC (refd)
Suthakar a/l Sivakumar lwn Pendakwa Raya dan lain-lain rayuan [2025] 1 MLJ 263; [2024] 10 CLJ 335, FC (refd)

Legislation referred to

Abolition of Mandatory Death Penalty Act 2023 s 34
Evidence Act 1950 ss 27, 45, 133A
Penal Code ss 300, 300(a), (b), (c), (d), 302

Appeal from: Criminal Trial No Q-05(M)-456–12 of 2020 (High Court, Sri Aman)

Orlando SW Chua (with Vanessa Ting Ann Yee) (Wong Orlando Chua & Kuok) for the appellant.
Mohd Khusairy Ibrahim (Attorney General's Chambers) for the respondent.

Mohamed Zaini Mazlan JCA:

INTRODUCTION

[1] The appellant was charged with the murder of his wife, a case that tragically came to light when two anglers discovered her bodiless head on a riverbank. The appellant and his wife, a Chinese national, had been married since 2011. He worked as a pharmacist and managed a pharmacy, while his wife was a homemaker. They had two children together, but their marriage became tumultuous in the later years.

[2] The appellant was charged with the murder of his wife ('the deceased') under s 302 of the Penal Code ('the PC'). It was alleged that he committed the murder between 9.30am on 25 February 2018 and 4.30pm on 3 March 2018. However, the prosecution's evidence was entirely circumstantial, as there were no eyewitnesses. The High Court found the appellant guilty after a full trial. The charge against the appellant reads as follows:

That you, WONG ZING HAW, (NRIC: 7612140-13-5717) between 25th February 2018 at about 9.30 a.m until 3rd March 2018, at about 4.30 p.m at Lot 1530, Block 3, Simanggang Town Land District, in the district of Sri Aman, in the State of Sarawak, did commit murder by causing the death of Yang Xi (People's Republic of China Passport No: E64323317) and you thereby committed an offence punishable under section 302 of the Penal Code.

THE PROSECUTION'S CASE

[3] The appellant was a qualified pharmacist who operated a pharmacy called 'Zing Haw Pharmacy'. This pharmacy was located on the ground floor of a shophouse in the town of Simanggang in the Sri Aman district, Sarawak. The couple had two young children and resided in two units on the third floor of the shophouse. Two of the appellant's employees at the pharmacy lived on the second floor of the shophouse.

[4] The couple's relationship was described as stormy by the deceased's parents and friend. This was one factor that the prosecution relied on to support its case against the appellant. The deceased often called her parents to express her concerns about the appellant, complaining that he was deeply in debt due to gambling. She also complained of being physically abused by the appellant whenever they argued.

[5] The deceased's mother (PW9) had seen the strained relationship between the couple when she stayed with them for a while in 2014. The deceased had also related her anguish to her close friend, Ma Bi Jiang ('PW24'), who was also from China.

[6] On 26 February 2018, the deceased's father ('PW8') sensed that something was wrong when he was unable to reach her. Despite several attempts to call that day, he was unsuccessful. Concerned, he contacted his ex-wife, the deceased's mother, to see if she had heard from their daughter. She informed him that her last conversation with the deceased had been two days earlier, on 24 February 2018.

[7] The deceased's mother decided to reach out to the appellant on 26 February 2018 via WeChat, an online messaging application. During their conversation, the appellant revealed that he had argued with the deceased and had asked her to leave the house. The following day, the deceased's father spoke to his granddaughter via video call. He noted that the appellant was present during the call and, when asked why he had chased the deceased out, the appellant simply replied that he was furious with her at that time.

[8] The two employees at the appellant's pharmacy were Lilisuyanti

Mohammed (PW14) ('Lili'), and Patheresa ak Desmond (PW16), ('Patheresa'). Lili had been working with the appellant since 2009 and was familiar with his handwriting. In addition to her duties at the pharmacy, she occasionally delivered food to the deceased and her children. Lili last saw the deceased on 25 February 2018, at around 9.30am during one of these food deliveries. According to her, the deceased appeared to be normal on that day. Later, on the same day, Lili requested the appellant's permission for a two-day leave on 26 and 27 February 2018. The appellant was initially reluctant as he claimed that he needed to accompany the deceased to the Immigration Department in Kuching the next day. He however relented and approved Lili's application.

[9] Patheresa had been working with the accused since June 2016. Like Lili, she too was occasionally tasked to bring food to the deceased. She worked alone at the pharmacy on the 26 and 27 February 2018 as Lili was on leave. She was not asked to send food to the deceased on both days. On 26 February 2018, the appellant informed her that the deceased needed to go to the Immigration Department in Kuching. She did not see the deceased coming down from her unit and had never witnessed her traveling to Kuching alone. She also did not see the deceased on the 1 and 2 March 2018.

[10] Patheresa testified that the appellant seldom came to the pharmacy on the 26 and 27 of February 2018, as well as on the 1 and 2 of March 2018, choosing to stay home instead. She found this odd since the appellant usually spent more time at the pharmacy. The appellant informed her that he would be going to Kuching to pick up the deceased on 2 March 2018.

[11] Ijah Jumpok ('PW32'), the Head of the Visa, Pass and Permit Department at the Immigration Office in Kuching, testified that the deceased did not appear at the Kuching Immigration between 28 February 2018 and 2 March 2018. She stated that visa applications can be processed at the Immigration Office at Sri Aman. She also testified that the deceased had already renewed her visa at the Sri Aman Immigration Office on 8 July 2017, which had been extended until 9 May 2018. There was therefore no necessity for the deceased to renew her visa in February or March 2018.

[12] Lili returned to work on 28 February 2018. The appellant came to the pharmacy around 10am and complained to Lili of a foul smell coming from the back of the pharmacy. She also noticed the odour, which she described as a smell of a carcass. The appellant then instructed Lili to buy 'Clorox' (a brand of bleach) to clean the backyard. After cleaning, the appellant took a shower in the pharmacy's bathroom. Lili claimed that the appellant had never showered there before.

[13] Lili went to work as usual on 1 March 2018, while Patheresa was on leave. Lili stated that the appellant came to the pharmacy, left his youngest child with her, and then left to pick up his eldest child from school. After picking up his eldest child, the appellant left him with her and instructed her to call him if anything arose. The appellant did this from 28 February 2018 until 2 March 2018, only picking up his children to return home at 7pm. On 1 March 2018, the appellant did not ask her to send food to the deceased, and she did not see him bring any food either. That same day, the appellant told Patheresa that he was going to Kuching the next day to pick up the deceased. Both Lili and Pantheresa were at work on 2 March 2018. On that day, the accused came down and told them that he was going to Kuching but did not tell them why. He never mentioned the deceased. The appellant and his children left in a Kia Sorento car.

[14] On 2 March 2018, Mohamad Salleh bin Jon ('PW12') saw the appellant at the jetty of Kampung Agropolitan. PW12 was with his brother, Adam bin Jon ('PW13'). PW12 recognised the appellant, as he had previously bought medicine from the appellant's pharmacy. When PW12 asked the appellant if he was going fishing, the appellant replied 'No' stating that he was merely taking a stroll. The appellant also inquired of PW12 whether there were crocodiles in the area. PW12 saw two children in the appellant's car but did not see any adult female with them.

[15] Later, at approximately 7.40pm, the appellant called Lili and instructed her to get three boxes and leave them in front of his home. Lili followed his instructions. Afterwards, she went to a festival in town with her mother (PW15). When Lili returned home around 9.40pm, the boxes were no longer there. The appellant's car was parked outside. Lili was accompanied by her mother when returning. Her mother claimed to have seen the appellant putting two boxes in his car.

[16] The prosecution concluded that the deceased was last seen alive on the morning of 25 February 2018 at around 9.30am.

[17] Siti Al-Zaharah Sulaiman (PW20) worked at a hardware shop in Sri Aman. According to her, the appellant came to the shop on the 28 February 2018 and purchased the following items:

(a) a 16 inch aluminium heavy duty pot;

(b) an 8 inch chopping knife;

(c) a 10 inch handle knife;

(d) a kitchen knife;

(e) a wooden round chopping board measuring 14 inches x 5 cm;

(f) a tube of heating gel;

(g) 2kg of charcoal;

(h) a saw blade;

(i) a tabular frame hacksaw; and

(j) a 14 inch handsaw.

[18] The deceased's father ('PW8') decided to go to Sarawak when he failed to contact the deceased. He arrived in Kuching on 4 March 2018 and was picked up by the appellant. During the journey to Sri Aman, the appellant told him that the deceased had run to Kuching and that he had tried to locate her but to no avail. They then went out accompanied by the appellant's friend, Ah Chien. The latter took the deceased's father to his house while the appellant went his own way. Ah Chien showed the deceased's father a photo on his handphone: it was the photo of the deceased's severed head. The deceased's father then sent a message via WeChat to the appellant, telling him to go to the police station. He did not receive any response. Ah Chien sent the deceased's father to the police station upon his request. The appellant was also at the police station but they did not speak to each other.

[19] The deceased's father met the Investigating Officer, ASP Ang Tuan Peck ('PW37'), at the police station and introduced himself. PW37 then took the father to the mortuary to identify a bodiless head. The father immediately identified the head as that of his daughter.

[20] Before the father's arrival, the appellant had insisted to PW37 that he should be the one to identify the head, claiming there was no need for the deceased's father to do so. The appellant went to the mortuary alone but did not identify the head as his wife's, stating instead that his wife was much prettier. Ultimately, the head was confirmed to be that of the deceased through DNA analysis.

[21] During the investigation, PW37 and his team visited the appellant's residence to collect the personal belongings of the deceased's father. Upon entering, they were met with a strong odour permeating the premises, which smelled like bleach. The source of the odour was traced to the back of the property. When they opened a freezer, they discovered it contained a large quantity of lemon, garlic, and ginger submerged in liquid. The police team also found three empty bottles of 'Clorox' on the premises. Hazalinawati Zailani (PW22), a chemist from the Chemistry Department of Kuching, testified that 'Clorox' contains hypochlorite, which can instantly destroy human DNA and also eliminate odour.

[22] The police team seized several items, including a wooden chopping board, two iron chains, and a silver pot, which the appellant had bought from a hardware store. During the investigation, a notebook was also found in the appellant's car. One of the pages in the notebook contained handwritten notes, as follows:

(a) legs — x 2;

(b) hands — x 1;

(c) head — x 1;

(d) shoulder bone — x 5;

(e) finger — x 1;

(f) thorax — x 1;

(g) skin — x 1;

(h) pelvic — x1;

(i) organ — x 1;

(j) yellow — organ;

(k) shoulder;

(l) small blue; and

(m) skin big blue.

[23] Mohd Tauronazmi Ismail ('PW12'), a scientific officer in the Document Examination Section of the Chemistry Department in Sabah, was assigned to analyse the handwritten notes in the notebook. In his expert opinion, these notes were written in the appellant's handwriting. The court accepted his evidence under s 45 of the Evidence Act 1950 ('the EA 1950'). Lili also identified the handwritten notes as belonging to the appellant. The court accepted her evidence too as she had been working with the appellant since 2009 and was very familiar with his handwriting.

[24] PW37 instructed ASP Taruna Madian ('PW26') to assist him with the investigations. PW26 interviewed the appellant at the police station on 13 March 2018. The appellant told PW26 that the deceased's body was thrown in a river at Lingga and that the knife was at his home. The appellant also said that he could show the police the locations.

[25] The appellant then led PW26 and a police forensic team headed by Inspector Suhal ('PW28') to a bridge at Lingga, and told them that this was the place where he had thrown the deceased's body. While returning to Sri Aman in the police vehicle, the appellant instructed the officers to stop at a Christian

cemetery at Bukit Gerunggang Stumbin. There, he pointed out the site where he had burned some items. The police team collected remnants of burnt papers, plastics, and boxes before leaving the cemetery.

[26] While still in the car, the appellant informed PW28 that he had thrown the deceased's head and arms at Jalan Skait and offered to show them the location. Upon arriving at the site, the appellant indicated where he had allegedly buried the head and arms, but the police did not find any remains. They then proceeded to the appellant's home, where the appellant pointed out a knife in the sink and claimed that it was the knife he had previously mentioned.

[27] The learned judge considered the provisions in s 27 of the EA 1950 regarding the admissibility of the appellant's statement to the police, as well as his actions in showing them the seized items. The learned judge recognised that the information provided by the appellant and his knowledge were limited to the discovery of facts relevant to the charge against him and should not be used as evidence to prove his guilt.

[28] The remnants of burnt newspapers, plastics, boxes, and other items seized from the cemetery and the appellant's home were sent to the Chemistry Department in Kuching for analysis. The assigned chemist (PW23) discovered traces of blood on the plastic materials. She found DNA traces belonging to both the deceased and the appellant on these items.

[29] The deceased and the appellant's daughter, Chloe Wong Yi Xuan (PW27) ('Chloe') had testified. She was eight years old when testifying but was about six years and two months old during the incident. She therefore came under the category of a child of tender years under s 133A of the EA 1950. The learned judge found it obligatory for him to ascertain whether the daughter could comprehend the questions posed and provide rational answers. After conducting an inquiry, the learned judge was satisfied that she possessed the necessary intelligence to understand the proceedings and had a basic understanding of her oath.

[30] Chloe had witnessed the appellant tying the deceased to the bed with a set of chains and called out 'Mummy' to the deceased but received no response. She claimed that the deceased was not sleeping but lay still. The appellant then ordered Chloe and her younger brother to leave the room. She never saw the deceased again after that day. The appellant told Chloe that the deceased had run away to Kuching. He subsequently took Chloe and her younger brother to Kuching in search of the deceased but left them at the house of Ma Bi Jiang ('PW24'), the deceased's close friend.

[31] The learned judge observed that while Chloe could not recall the exact date of the quarrel, she remembered seeing the deceased between the Chinese New Year and the *Chap Goh Mei* celebration. The learned judge also noted some inconsistencies in the daughter's testimony; she initially claimed to have seen the deceased leaving for Kuching with her luggage but later stated that it was the appellant who informed her that the deceased had left with the luggage.

[32] The learned judge believed that the Chloe's evidence should be assessed together with the testimonies of other prosecution witnesses. The daughter's account of the appellant taking her to Kuching to search for the deceased was consistent with the testimony of PW24 (Ma Bi Jiang). Furthermore, her assertion that the appellant and the deceased had quarrelled was corroborated by the testimonies of the deceased's parents and the appellant's employees, Lili and Patheresa. Additionally, the daughter's claim that the appellant had tied the deceased with an iron chain was supported by the discovery of the chain in the appellant's home and the chemist's finding of the deceased's DNA on that chain.

[33] In his observation of the Chloe, the learned judge noted that she remained composed during questioning and was able to respond intelligently. He also observed that although she is currently in the custody of her grandparents, she demonstrated integrity as an honest and truthful witness when providing evidence against her father. The learned judge concluded that the Chloe's testimony was reliable, despite some discrepancies.

THE HIGH COURT'S FINDINGS ON THE PROSECUTION'S CASE

[34] The learned judge inferred from the testimonies of the witnesses that the appellant's relationship with the deceased was strenuous, which led to the appellant's aggressive behaviour in tying up the deceased with an iron chain on the bed, as seen by the deceased's daughter. Furthermore, the deceased's DNA was also found on the iron chain. The deceased was also in a poor condition as seen by her daughter. The learned judge also surmised that the appellant had cut up the deceased's body into several parts based on the pathologist's ('PW5') report. The pathologist had also ruled out that the injuries to the deceased were caused by crocodiles as the incision to the front of the neck appeared to be slanting from both sides of the neck towards the middle edge of the back of the nap and ragged at the left and right edge. The pathologist was of the opinion that the knife seized from the appellant's home could have been used to sever the deceased's neck from her body. There were also strands of human hair on the wooden chopping board seized from the appellant's home. In the learned judge's judgment, the appellant had disposed of the cut-up body parts of the deceased into the river at Kampung Skait. The learned judge also considered the handwritten notes of the accused in the green notebook which shows that

the appellant had made a note on the body parts that had been cut into pieces.

[35] The learned judge deduced that the appellant had spent the afternoon in his house from 28 February 2018 until 2 March 2018 to cut up the deceased's body into parts, as Lili had testified that the appellant would leave his two children at the pharmacy under her care after picking them up from school. The appellant would then go to his flat and never came down until 7pm to pick up his children.

[36] Lili testified that the appellant had left home, supposedly headed for Kuching, around 2pm on 2 March 2018. The learned judge noted that a one-way trip to Kuching from Sri Aman takes approximately three hours. However, the appellant was seen at the Kampung Agropolitan jetty at 5pm by PW12 and PW13. The learned judge remarked that it would be impossible for the appellant to be in two places simultaneously. Furthermore, PW12 and PW13 did not see any female adult in the appellant's car. The judge concluded that the appellant never travelled to Kuching and had lied to both Lili and Panthera.

[37] The learned judge reminded himself of the necessity to corroborate the evidence provided by the deceased's daughter (Chloe) and carefully analysed her testimony alongside that of the other witnesses. He rejected Chloe's claim that she had seen the deceased leaving the house for Kuching, since this information was conveyed to her by the appellant. However, he concluded that this single inconsistency was not sufficient to undermine her credibility.

[38] Although the pathologist could not determine the deceased's cause of death, the learned judge held that the fact remains that she had died and that the absence of any conclusive evidence of the cause of death is not fatal to a charge of murder. In analysing the circumstantial evidence, the learned judge was convinced that the only logical conclusion points to the accused as the person responsible for the deceased's death, given that no one else had interacted with her prior to her disappearance and she was last seen alive in her home.

[39] On whether the appellant's act came within any of the ambit of the four circumstances under s 300 of the Penal Code, the learned judge relied on the pathologist's findings, namely the manner in which the deceased's head was severed from her body. The learned judge concluded that the deceased did not struggle when her injuries were inflicted, suggesting that the perpetrator had ample time to carry out the act. The pathologist ('PW5') had testified that the knife seized from the appellant's home could have been used to sever the deceased's head. Based on this information, the learned judge concluded that there was a direct connection between the accused's actions and the fatal injury

that led to the deceased's death, which falls under para (c) of s 300 of the PC.

[40] The learned judge therefore held that the accused deliberately caused the injuries leading to the deceased's death which falls under s 300(c) of the PC and that the prosecution had proven a prima facie case.

THE APPELLANT'S DEFENCE

[41] The appellant chose to give sworn evidence. He claimed that the deceased had asked him to send her to Kuching on 24 February 2018 because she wanted to buy a new Apple iPhone X. The deceased also intended to go to the Immigration Office for passport related matters as she planned to return to China on 7 March 2018. The appellant had on the following day agreed to give Lili leave from the 26 to 27 February 2018 and suggested that the deceased's trip to Kuching be postponed to another date. He claimed that the deceased got upset and threw her handphone on the floor, damaging it. The appellant saw the deceased packing her things into a bag but did not enquire further as she was still upset with him.

[42] The appellant claimed that the deceased was not at home on 26 February. He claimed that his daughter (Chloe) told him that the deceased had left with her luggage and gone to Kuching. On the same day, the deceased's mother called him to ask about her daughter's whereabouts, as she had been unable to contact her for two days. The appellant told her that the deceased had gone to Kuching to buy a new handphone, as her current one was broken.

[43] On 2 March 2018, the accused decided to take his children to Kuching to find the deceased. He instructed Lili and Panthera, to oversee the pharmacy in his absence. Although he had mixed feelings due to it being *Chap Goh Mei,* he drove to Lingga and told the children they would be having a picnic at the beach. However, upon arrival, he only found a fishing village without a beach. There was a signboard at the jetty warning of crocodiles, which he used to scare his children by saying they could not go to the beach because of the risk.

[44] The appellant returned to Sri Aman to see whether the deceased had returned home. During the drive, he called Lili and told her to prepare three boxes in case he needed to travel to Kuching that night. He arrived home at 8.30pm and collected the three boxes left by Lili. Since the deceased was still not home, the appellant decided to head to Kuching that night. He packed his belongings into a single box and left for Kuching with his children.

[45] The appellant arrived in Kuching on the morning of 3 March 2018. He went to PW24's house and spoke to her briefly before checking in at the Imperial Hotel Boulevard. He left his children at PW24's house and drove

around looking for the deceased. He also claimed that he attempted to repair the deceased's handphone but was told that it could not be fixed. He then took the children to stay at the hotel with him.

[46] That same morning, the appellant received a phone call from his friend Ah Yew, who informed him that PW37, the Investigating Officer, was looking for him. The appellant also received a WhatsApp message from a Mr Ngu Sze Kion, which included a photo of a human head found at Skait on 3 March 2018. Disturbed by this news, the appellant woke his children, checked out of the hotel, and went to the airport to pick up his father-in-law. They went back to Sri Aman after picking up his father-in-law.

[47] The appellant left PW8 with Mr Ngu Sze Kion and went to the hospital to identify the head. He claimed that he was in a state of shock and could not accept that the head belonged to the deceased. He then asked Mr Ngu Sze Kion to take his father-in-law to the hospital. The appellant stayed outside while his father-in-law was called in to identify the head.

[48] The police subsequently arrested the appellant and interrogated him. He repeatedly denied having killed the deceased and insisted that the head could not belong to her, stating that she was prettier and alive when she left home. The appellant also urged the police to review the closed circuit television footage from the shop next to his pharmacy to confirm that the deceased had left home on 26 February 2018.

[49] When the police brought the appellant to the Sungai Sinu Bridge, he claimed that the police had told him to point to the river bank. He denied leading the police there. He was also brought to the Bukit Gerunggang Christian Cemetery, where he was instructed by PW26 to point to a pile of burnt rubbish. He was surprised to hear PW28 testify that the police had collected items from the burnt rubbish pile that contained the deceased's DNA, as he did not observe the police collecting anything and denied leading them to the cemetery.

[50] The police then brought the appellant to the riverbank of Sungai Skait, where PW26 indicated that it was the spot where the deceased's head had been found. PW26 asked him to point to the riverbank. Finally, the police went to his home and requested that he show them where he had kept the knives. The appellant led them to the kitchen basin and was asked to point out to the knives. Throughout this process, he noticed that a police photographer took pictures whenever he was instructed to point to something.

[51] The appellant did not file a police report regarding the disappearance of the deceased as he had always believed that she was in Kuching. It never

occurred to him that something might have happened to her. He also mentioned that the deceased had several friends from China in Kuching and thought she might have stayed with one of them. However, he only had PW24's phone number.

THE HIGH COURT'S FINDINGS ON THE APPELLANT'S DEFENCE

[52] The learned judge was unconvinced with the appellant's claim that the deceased had gone to Kuching for immigration matters and to buy a new handphone. The learned judge determined that there was no necessity for the deceased to go to Kuching, as Sri Aman has an Immigration Office. Furthermore, the deceased had recently went to the Immigration Office on 8 July 2017 to extend her visa, which was extended to 9 May 2018, as related by PW32, the Head of Visa, Pass and Permit of the Kuching Immigration Office. PW32 also testified that based on the Immigration Department's records, the deceased did not go to any of the Immigration offices between 28 February 2018 and 2 March 2018.

[53] The learned judge also doubted the appellant's contention that the deceased had planned to return to China on 7 March 2018, as this contradicted the testimony of PW24. PW24 had picked up the deceased from the airport in Kuching upon her return from China on 7 March 2018. They had spent some time together before the deceased returned to Sri Aman. PW24 testified that the deceased had never told her of any plan to go back to China. The learned judge also held that there was no justifiable reason for the deceased to return to China as her visa was valid until 9 May 2018.

[54] The learned judge dismissed the appellant's account of searching for the deceased in Kuching for several reasons. The appellant's lackadaisical attitude towards the alleged disappearance of the deceased was evident since he took no action from 26 February 2018 to 2 March 2019, despite knowing that the deceased's handphone was with him. Furthermore, if the appellant's claim that his daughter had purportedly told him that the deceased had left for Kuching with her luggage was to be believed, a reasonable husband would have made inquiries rather than simply assuming she had gone to Kuching. The learned judge pointed out that the appellant could have attempted to contact the deceased's close friend, PW24, but did not.

[55] The learned judge was also unconvinced that the appellant was genuinely searching for the deceased in Kuching. He noted that the appellant had merely driven around without any specific destination in mind. The learned judge concluded that the appellant had taken two hours for his search, as he would have checked into the hotel at 2pm and arrived at PW24's house at 4pm. The learned judge was of the view that the appellant could have repaired

the deceased's handphone first in order to retrieve the contact information for the deceased's friend before embarking on an aimless search. Although the appellant contended that he had gone to a shop to get the handphone repaired but was unsuccessful, the learned judge opined that he should have gone to the repair shop first before driving around aimlessly if he was genuinely looking for the deceased.

[56] The learned judge also held that the appellant had not successfully challenged Chloe's testimony that there had been a quarrel between the appellant and the deceased, and that she saw the deceased tied up in chains on the bed. The learned judge considered this evidence to be detrimental to the appellant's defence, as it indicates that the appellant had acted violently towards the deceased in the days leading up to her death.

[57] The learned judge was also of the opinion that the appellant is intelligent, noting that he was seen giving instructions to his counsel during the trial. The learned judge observed that the appellant had been intently listening to the evidence presented by the prosecution's witnesses and had tailored his testimony to align with his defence, taking advantage of the information that he had gathered from the prosecution's side. However, the learned judge concluded that the appellant concocted unreasonable stories in his efforts to create doubts. For instance, he claimed to have taken his children to Lingga for a picnic and a swim at the beach. The learned judge pointed out that this story was implausible, as it is well-known that there is no beach in the Sri Aman district, as Sri Aman is situated along the Batang Lupar river, which is known to be a habitat for crocodiles.

[58] The learned judge concluded that the appellant's defences were mere denials and that he has failed to cast any reasonable doubt on the prosecution's case. The appellant was found guilty of murder and sentenced to death by hanging.

THE APPELLANT'S APPEAL

[59] The appellant raised three issues in this appeal. They were as follows:

(a) what injury/injuries were inflicted on the deceased that was/were sufficient in the ordinary cause of nature to cause the deceased's death;

(b) the absence of mens rea and/or finding of the same; and

(c) a complete absence of motive for the appellant to murder the deceased.

[60] We will address each issue in turn.

What injury/injuries were inflicted on the deceased that was/were sufficient in the

ordinary cause of nature to cause the deceased's death

[61] The appellant's counsel argued that the pathologist (PW6) was unable to determine the actual cause of the deceased's death solely by examining her decapitated head. PW5 could not establish whether the deceased had sustained any additional injuries or underlying health conditions that might have contributed to her death. Furthermore, PW5 could not determine whether the cuts that severed the neck from the body occurred before or after death.

[62] It was contended that the learned judge had misdirected himself by assuming that the accused had caused or inflicted the injuries leading to the deceased's death under s 300(c) of the Penal Code, as there was no conclusive evidence to indicate what injuries were inflicted on the deceased by the accused. The appellant's counsel concluded that the essential elements of s 300(c) of the Penal Code had not been sufficiently proven to establish a prima facie case of murder under that section.

[63] It would be necessary to refer to the relevant part of PW5's testimony:

> Q318: Refer to your witness statement at page 17 under the heading of 'CONCLUSION'. Can you tell the Court why you are of the opinion that the cause of death of the deceased was unascertained?
>
> A: I was not able to give exact cause of death as the human remains that I examined was not a complete body. Therefore, I do not know that I examined was not a complete body. Therefore, I do not know whether the deceased had suffered any other injury or disease or have intoxication that might lead to her death or contributed to her death. The examination of the head of the deceased, I was not able to find any disease or evidence from the toxicology analysis that the deceased might have intoxication that could lead to her death.
>
> In regards to the injuries seen at the neck whereby the deceased suffered incision that severed the neck and the head from the rest of the body. I was not able to conclude by mere gross examination of the injuries or even though histopathology examination of the tissue meaning examination under microscope that the injury occurred before death. The limitation do in some parts resulted from the decomposition has also set in,
>
> Therefore, that is why I concluded that I cannot give definite cause of death of the deceased. That is why I give the cause of death as unascertained (human remains).

[64] PW5's reasons for not being able to ascertain the exact cause of death have been clearly explained. It is however not fatal to determine conclusively the precise cause of death.

[65] Even though the pathologist was not able to ascertain the actual cause of death, the fact remains that the deceased had died. She would have died from some bodily injury sufficient to cause her death as she was decapitated, which

could have been the cause of death. The actual cause of death does not need to be conclusively proven, for there have been decided cases where the bodies of the victims were either not recovered or in a state where it was impossible to ascertain the cause of death. One example is the oft-cited case of *Sunny Ang v Public Prosecutor* [1966] 2 MLJ 195. In that case, the victim's body was never discovered, although she was last seen scuba diving. The Federal Court upheld the appellant's conviction for murder. Another similar case is *Pathmanabhan a/l Nalliannen v Public Prosecutor and other appeals* [2017] 3 MLJ 141; [2017] 4 CLJ 137. The victims' bodies were never recovered save for some bone fragments and traces of one of the victim's blood on a slipper. The cause of death for all the victims was never ascertained as there were no bodies for a post mortem to be conducted. The fact remains that all the victims were dead. The Federal Court upheld the appellant's conviction for murder.

[66] We are of the opinion that the learned judge correctly concluded that the only reasonable inference is that the accused caused the death of the deceased. No one else had contact with the deceased before her disappearance, and she was last seen alive in their matrimonial home. The learned judge's conclusion was further supported by the testimony of the pathologist, who stated that the knife seized from the appellant's home could have been used to dismember the deceased's body. Additionally, human hairs were found on a wooden chopping board taken from the appellant's home. The deceased was last seen alive by the appellant's daughter, Chloe, who observed the deceased chained to the bed. Chloe and her brother were then ordered out of the room by the appellant. Therefore, any injuries that led to the deceased's death could only have been inflicted by the appellant. This is the only reasonable conclusion.

[67] We therefore find no appealable errors in the learned judge's findings on this issue.

The absence of mens rea

[68] It was submitted that the learned judge had given a 'non-speaking' judgment as there was no affirmative finding of mens rea in his judgment as His Lordship had never established that the appellant intended to cause the injuries on the deceased. The appellant contended that even if assuming that the injuries suffered by the deceased were sufficient in the ordinary course of nature to cause death, this does not imply that the appellant had the intention to cause those injuries.

[69] It is incumbent upon us, sitting as an appellate court, to sieve through the evidence and determine whether there was an element of mens rea, regardless of whether the learned judge had made that finding. In *Public*

Prosecutor v Sanderasegaran a/l Nithenanham [2024] 3 MLJ 629; [2024] 4 CLJ 823 (FC), Nordin Hassan FCJ, speaking for the apex court, held:

> (3) A criminal case is proved or otherwise by evidence of witnesses and documents tendered in court, not by what is submitted by parties or anything said or omitted to be said by the trial judge in his grounds of judgment. Otherwise, it would go against the principles of criminal justice and fair trial.

[70] A murder charge is brought under s 302 of the PC, The provisions outlined in s 300(a) to (d) of the PC clarify the mens rea, or mental state, required to prove murder under s 302. The Federal Court highlighted this point in the case of *Suthakar a/l Sivakumar lwn Pendakwa Raya dan lain-lain rayuan* [2025] 1 MLJ 263; [2024] 10 CLJ 335. The apex court also quoted the case of *Hoo Ah Tee v Public Prosecutor* [2013] 4 MLJ 636; [2013] 4 CLJ 228, where it was held:

> [11] ... (ii) It is wrong to say that the accused was charged under s 300(a) or (b) or (c) or (d). The only charge to attract s 302 is a charge for murder and for that the prosecution has to prove one of the elements in s 300. Technically there cannot be a charge on any of the limbs of s 300. The charge must only be for murder. (iii) Section 300(a) to (d) only explains how intention can manifest for the presumption of culpable mental state to operate to satisfy the element of mens rea to sustain a charge of murder ...

[71] It is nearly impossible to prove mens rea by direct evidence, as it is a factual question that must be established by inferring from the circumstances of the case. The recent decision by the Federal Court in *Public Prosecutor v Muhammad Khairuanuar bin Baharuddin and another appeal* [2024] 6 MLJ 397; [2025] 1 CLJ 517 offers valuable insights into the concept of intention.

> [32] *To begin with, an intention is a question of fact that cannot be proved by direct evidence. Inference from the evidence presented and the surrounding circumstances has to be made to determine this fact.* This too is stated lucidly by Thompson J in *Chan Pean Leon v Public Prosecutor* [1956] 1 MLJ 237; [1956] CLJU 17; [1956] 1 LNS 17 in the following words:
>
> > Intention is a matter of fact which in the nature of things cannot be proved by direct evidence. It can only be proved by inference from the surrounding circumstances. Whether these surrounding circumstances make out such intention is a question of fact in each individual case. (Emphasis added.)

[72] The Federal Court in that case also referred to the discussion on intention in *Ratanlal & Dhirajlal, The Indian Penal Code* (32nd Ed):

> intention how to be deduced — The intention is a question of fact which is to be gathered from the acts of the parties. *The Law looks as regards intention to the natural result of a man's act and not to the condition of his mind. So, when a normal man does an act, he should be credited with the intention of doing that which is inevitable consequence of his act.* Further, the nature of intention has to be gathered from

various circumstances, for instance, the kind of weapon used, the part of the body hit, the amount of force employed and the circumstances attending upon death. In the absence of any indication or circumstances to show that the particular injury inflicted by the accused was accidental or unintentional or that some other kind of injury was intended to be inflicted, the presumption would be that the very injury suffered by the deceased was intended. *Mere absence of premeditation will not be enough to displace this presumption*. The question whether the offender entertained a particular type of intention or not is the question which is to be answered not from any direct evidence but from the proved facts and circumstances of the case. However, it should be borne in mind that intention with which an act should be found to have been committed is neither constructive nor presumptive in its character. Though it is true that the Court should not expect direct evidence of intention in every case and that a proper inference about existence of a particular intention can be made from the circumstances of the case, such circumstances should be such as would enable the Court to arrive at a conclusion beyond reasonable doubt that the intention in question did exist. Evidence of motive is generally found to be capable of supplying good evidence about the nature of the intention to commit the particular act. The facts collateral to the main incident such as the manner and the method by which the offence was executed, possibility of the successful execution of the intended act, care taken by the accused to eliminate the possible mistakes in carrying out the successful execution of the intended act are some of the facts which are likely to throw good light upon the actual intention with which the act was done. (Emphasis added.)

[73] We have carefully perused the learned judge's judgment and find that although he may not have expressly stated the phrase mens rea in his judgment, he had concluded that the accused had the intention to inflict the injuries that caused the death of the deceased under s 300(c) of the PC as all the evidence led to that conclusion. The evidence that the learned judge relied on were as follows:

(a) the deceased suffered an incision that severed the neck and the head from the rest of the body;

(b) the head was decapitated at the level of C7 using a sharp and heavy object or weapon such as a golok, parang, cleaver or any similar object;

(c) at least four cuts were made to severe the head form the main trunk of the body;

(d) the incision on the front of the neck was slanting from both sides towards the middle edges on the back of the nape and appeared to be ragged at the left and right edges;

(e) one slightly oblique cut on the left nape exposed the neck structure; and

(f) crocodiles did not inflict the injuries.

[74] Based on these findings, the learned judge inferred that the knife seized from the appellant's home was used to inflict the injuries on the deceased. The learned judge rightly concluded that the accused was responsible for inflicting the injuries on the deceased, the accused must have intentionally intended to cause those injuries. This falls under limb (c) of s 300 of the Penal Code. We fully agree with the learned judge's findings and see no appealable errors regarding this issue.

A complete absence of motive for the appellant to murder the deceased

[75] Learned counsel for the appellant was candid in admitting that motive is not an essential ingredient of the murder charge against his client. Nonetheless, he argued that motive remains a relevant consideration and cited the Singaporean case of *Public Prosecutor v Oh Laye Koh* [1994] SCD 63; [1994] 2 SLR 385 in support of his proposition.

[76] It was argued that there is not a modicum of evidence to even remotely suggest that the appellant had any motive, such as an extra-marital affair, pecuniary gain and so on. The appellant's counsel contended that the learned judge had wrongly concluded that the 'constant quarrel' between the two was the motive for the killing, as His Lordship asserted that the appellant's motive was rooted in their tumultuous relationship over the years, despite the absence of any immediate incidents before the death that could have provoked the appellant to commit the act.

[77] Learned counsel emphasised that the appellant's troubled relationship with the deceased had existed for approximately four years before her death. The deceased had confided in her close friend ('PW24') about her desire to get a divorce and return to China. She also recounted an incident in which the appellant had strangled her, only stopping when their daughter cried. Additionally, during a visit back home in China, the deceased told her father ('PW8') about her intention to leave the appellant due to his alleged debts and gambling problems. The deceased had also informed her mother (PW9) that the appellant had physically abused her, stating that she had been strangled, kicked, beaten, and thrown onto the bed during her pregnancy. PW8's last contact with the deceased was on 24 February 2018, when the deceased shared her plans to return to China. There was no sense of urgency in her tone during that conversation.

[78] The appellant's learned counsel described the appellant as a man with a short temper and a violent disposition but argued that these traits do not necessarily make him a murderer. Learned counsel highlighted that in 2018, the appellant cared for the deceased when she was suffering from a fever, indicating that their relationship was similar to that of a typical marriage, with

its ups and downs. It was further argued that the deceased could have chosen to remain in China if she genuinely feared for her safety.

[79] In the case of *Sunny Ang*, it was noted that the appellant had a clear motive for the crime. He killed the deceased to benefit from her insurance policies, which named him as a beneficiary. Learned counsel argued that there was no valid reason for the appellant to murder the deceased since she was the primary caregiver for his family while he was occupied managing the pharmacy.

[80] Regarding the items purchased by the appellant from the hardware shop, namely the freezer filled with large amounts of sliced lemon, garlic, and ginger, three empty bottles of Clorox, the appellant's notebook, remnants of burnt papers and boxes found at a cemetery, and the kitchen knife shown to PW26 by the appellant, learned counsel argued that the common element among these exhibits points solely to clear and undeniable post-conduct related to the alleged murder. Learned counsel asserted that these items suggest the appellant may have used them to dismember the deceased's body, but they do not provide evidence that they were used to take a life.

[81] The proof of motive will no doubt lend more credence in proving the appellant's intention to murder the deceased. Motive however is not a *sine qua non* of intention. In the case of *Public Prosecutor v Oh Laye Koh*, Singapore's Court of Appeal held that while demonstrating a motive may support the inference that the accused intended to commit the offense, the absence of a motive does not negate the presence of intent. This was emphasised by the appellate court in the following passage:

> 24. The element of 'intention' is rarely, if ever, proved by direct evidence; it is inevitably to be inferred from the surrounding circumstance. In this respect, 'intention' is to be distinguished from 'motive', even though the presence of a motive may bolster the inference that an intention to commit the offence was existent. *The absence of motive, however, need not necessarily mean that no intention was present.* (Emphasis added.)

[82] Motive is not necessary when relying on circumstantial evidence to convict an accused. This was held by the Federal Court in *Pathmanabhan a/l Nalliannen v Public Prosecutor and other appeals*. The apex court's discussion on motive in the following passages is particularly relevant:

> [160] Section 8(1) of the EA stipulates that motive is a relevant fact. It reads:
>
> 8 Motive, preparation and previous or subsequent conduct
>
> (1) Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.
>
> ...

[161] *Ratanlal & Dhirajlal's, Law of Crimes*, With List of Malaysian Cases, (24th Ed) Vol 2, p 1391 summarises the law on motive in the following words:

> 158. Motive is the ultimate end which a person hopes to achieve whereas intention is the immediate effect of his act. Motive is something which prompts a person to form an intention. The motive behind a crime is a relevant fact on which evidence can be given. Absence of motive is also a circumstance which is relevant for assessing the evidence. Proof of motive satisfies the judicial mind about the authorship of the crime but the absence does not ipso facto result in the acquittal of the accused. Motive is not a sine qua non to prove the case of the prosecution. Absence of proof only demands deeper forensic search and cannot undo the effect of evidence if otherwise is reliable and sufficient.

[162] In *Molu v State of Haryana* AIR 1976 SC 2499, the Indian Supreme Court aptly observed:

> It is well settled that where the direct evidence regarding the assault is worthy of credence and can be believed, the question of motive becomes more or less academic. Sometimes, the motive is clear and can be proved and sometimes, however, the motive is shrouded in mystery and it is very difficult to locate the same. If, however, the evidence of eye witnesses is creditworthy and is believed by the court which has placed implicit reliance on them, the question whether there is any motive or not becomes wholly irrelevant.

[163] The Court of Appeal in *Abdul Samid bin Edward v Public Prosecutor* [2015] 4 MLJ 58; [2015] 4 CLJ 149 made similar remarks which read:

> *Although motive was an important element to look out for when reiving on circumstantial evidence to convict an accused, it was not in our view, an absolute must, in the sense that an absence of an established 'motive' would exculpate the accused from the charge proffered against him, notwithstanding all other evidence which points to the accused being guilty of the crime charged.*

[164] Similarly, Sinha J in *Atley v State of Uttar Pradesh* AIR 1955 SC 807, 810 stated:

> Where there is clear proof of motive for the crime that lends additional support to the finding of the court that the accused was guilty but the absence of clear proof of motive does not necessarily lead to the contrary conclusion. If the prosecution has proved by clear evidence that the appellant had reasons of his own for getting his first wife out of the way, that would have lent additional assurance to the circumstantial evidence pointing to his guilt. But the fact that the prosecution has failed to lead such evidence has this effect only, that the other evidence bearing on the guilt of the accused has to be very closely examined.

[165] *We wholly endorse the observations made above in that motive is an important factor but not an ingredient of an offence to be proved in cases which turn on circumstantial evidence as in the present case. That said, it does not mean that where evidence of motive is vague, non-existent or not clear, an accused is exculpated provided there is sufficient evidence pointing to his guilt.*

[166] Having considered the matter, we agree with the defence that evidence of motive as adduced by the prosecution is far from being satisfactory. At one stage, the

prosecution contended that the unavailability of sufficient funds in the bank account of the first accused was the motive for the murder of Sosilawati and the three others. Later, the prosecution referred to the Penang land transaction as the motive behind the murder. In the circumstances, we hold that the evidence as regards motive is far too equivocal to be of any value.

[167] *However, as said earlier, motive may be helpful in assisting the court in coming to its decision but the absence of such evidence is not fatal to the prosecution case* (see: *Bhikari Behera v State of Orissa* 1995 Cri LJ 2998, 3000 (Oh); and *Rangi Lai v State of Uttar Pradesh* 1991 Cri LJ 916, 921 (All)). (Emphasis added.)

[83] With these observations, we now move to consider the circumstantial evidence. The circumstantial evidence were in gist as follows:

(a) the strained relationship between the accused and the deceased;

(b) the whereabouts of the deceased prior to her death and the accused's suspicious behaviour;

(c) the frequent quarrels and violent acts between the accused and the deceased;

(d) the pungent stench of bleach in the accused's house;

(e) the accused's purchase of hardware items such as chopping knives, hacksaws, a grinder, a chopping board, charcoal and heavy-duty pots a few days after the deceased was last seen alive;

(f) the accused's green notebook, which had the accused's handwritten notes of human body parts;

(g) the testimony of the deceased's daughter, Chloe and the appellant's employees, Lili and Panthera;

(h) the accused's statement leading to the discovery of evidence under s 27 of the EA 1950 which were lawfully admitted by the learned judge; and

(i) the accused's unusual and inconsistent conduct after the deceased's disappearance and after arrest.

[84] The circumstantial evidence, when viewed collectively, leads to an undeniable conclusion that the appellant murdered the deceased. We find that the learned judge had thoroughly analysed the circumstantial evidence in reaching the same conclusion. We find no reasons to disturb the learned judge's findings of fact.

SENTENCE

[85] The appellant was sentenced to death by hanging by the High Court, as this was a mandatory requirement under s 302 of the PC. However, this is no

longer the case, following the enactment of the Abolition of Mandatory Death Penalty Act 2023 ('the AMDP 2023'). This Act was passed by Parliament on 3 April 2023, and came into effect on 4 July 2023. Section 34 of the AMDP 2023 states the following:

> 34 Amendment of section 302
>
> Section 302 of the Code is amended by inserting after the words 'with death' the words 'or imprisonment for a term of not less than thirty years but not exceeding forty years and if not sentenced to death, shall also be punished with whipping of not less than twelve strokes'.

[86] With this amendment, courts are no longer required to impose the death penalty as a mandatory punishment. Instead, they have the discretion to either impose the death sentence or impose a prison term of no less than thirty years and no more than forty years, along with a minimum of 12 strokes of whipping for the appellant. We are therefore vested with the discretion whether to maintain the death sentence or replace it with imprisonment and whipping of the appellant.

[87] We are mindful that the court should consider several factors before passing a sentence. The first and uppermost factor is public interest. While it is necessary to balance the appellant's interests with those of the public, the sentence must not only deter others from committing similar crimes but also reflect society's revulsion toward the crime committed.

[88] We are unreservedly inclined to maintain the death penalty imposed on the appellant for these reasons:

(a) the crime was committed against a woman who was not only the appellant's wife but also the mother of their two children. Her death has deprived those children of the care and love that a mother can provide for many years;

(b) the appellant had mistreated the deceased by chaining her to the bed, where the children could see her. We can only imagine the trauma that their two children experienced and will likely continue to experience in the future from witnessing their mother's condition;

(c) the appellant had brutally cut the deceased's body into several pieces and disposed of the parts in the river. This act was gruesome, particularly as the deceased had been his wife for many years; and

(d) the appellant attempted to conceal his crime and showed no remorse.

[89] A clear message must be conveyed to the public that a crime of this nature is abhorred, and the ultimate punishment would be the death penalty.

CONCLUSION

[90] The factual findings of the trial court should not be disturbed, as they were largely based on the credibility of the witnesses and the impression formed by the learned judge, who personally observed them and assessed their honesty and accuracy.

[91] We are satisfied that there are no appealable errors that would warrant our intervention and find that the conviction against the appellant is safe. The appellant's appeal is therefore dismissed.

Appellant's appeal dismissed.

Reported by Dzulqarnain Ab Fatar